

Proposed technical amendment:

SECTION ____.(a) Section 4(c) of S.L. 2019-158 is repealed.

SECTION ____.(b) G.S. 15A-151.5(a) reads as rewritten:

"(a) Notwithstanding any other provision of this Article, the Administrative Office of the Courts shall make all confidential files maintained under G.S. 15A-151 electronically available to all prosecutors of this State if the criminal record was expunged on or after July 1, 2018, under any of the following:

...
 (7a) G.S. 15A-145.9 Expunction of records of certain offenses committed by human trafficking victims.
"

SECTION ____.(c) This section is retroactively effective December 1, 2019.

Explanation: corrects amendatory language from G.S. S.L. 2019-158, s. 4(c). S.L. 2019-158 implemented recommendations of the Human Trafficking Commission.

Section 4 (Expand Expunction Eligibility for Human Trafficking Victims) of S.L. 2019-158 provided for the expunction of certain convictions where the defendant was a human trafficking victim. Expunctions are generally not public and must be kept in confidential files maintained by the Administrative Office of the Courts. There is, however, a list of exceptions in G.S. 15A-151.5(a) that allow prosecutors to have access to information on expunctions. Section 4 of S.L. 2019-158 included an amendment to G.S. 15A-151.5(a) designed to allow prosecutors to obtain information on these new expunctions for human trafficking victim defendants.

There is an obvious drafting error in this amendment. The amendatory language and the format of the amendment text conflict. Specifically, the amendatory language used ("is rewritten to read") is old-style drafting language where the result is that the text being set out is literally revised to read as set out in the body of the amendment. In this case, the format of the body of the amendment, was redlined, as though the drafter intended to be using the coded bill drafting style normally used now in bill drafting in this State. The requirements for coded drafting are set out in G.S. 120-20.1, and that statute requires the amendatory language to read "reads as rewritten:". Without that specific amendatory language, G.S. 120-20.1 does not apply. As a result, for codification purposes at least, the purported coding in the amendment to G.S. 15A-151.5(a) failed, and G.S. 15A-151.5(a) is currently set out exactly as it was in the session law, that is, with subdivisions (a)(1) through (7) and (8) through (9) replaced by ellipses.

Background material:

Excerpt from S.L. 2019-158:

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019
SESSION LAW 2019-158
HOUSE BILL 198**

AN ACT TO IMPLEMENT RECOMMENDATIONS MADE BY THE NORTH CAROLINA
HUMAN TRAFFICKING COMMISSION.

The General Assembly of North Carolina enacts:

PART I. REDUCE DEMAND FOR HUMAN TRAFFICKING

....

**PART II. CIVIL AND POST-CONVICTION RELIEF FOR HUMAN TRAFFICKING
VICTIMS**

PROVIDE A CIVIL CAUSE OF ACTION FOR HUMAN TRAFFICKING VICTIMS

....

**EXPAND EXPUNCTION ELIGIBILITY FOR HUMAN TRAFFICKING VICTIMS
EXPAND EXPUNCTION ELIGIBILITY FOR HUMAN TRAFFICKING VICTIMS**

SECTION 4.(a) G.S. 15A-145.6(b) reads as rewritten:

"(b) A person who has been convicted of a prostitution offense may file a petition in the court of the county where the person was convicted for expunction of the prostitution offense from the person's criminal record provided that all the following criteria are met:

- (1) The person has not previously been convicted of any violent felony or violent misdemeanor under the laws of the United States or the laws of this State or any other state.
- (2) The person satisfies any one of the following criteria:
 - a. ~~The person's participation in the prostitution offense was a result of having been a trafficking victim under G.S. 14-43.11 (human trafficking) or G.S. 14-43.13 (sexual servitude) or a victim of a severe form of trafficking under the federal Trafficking Victims Protection Act (22 U.S.C. § 7102(13)).~~
 - b. The person has no prior convictions for a prostitution offense and at least three years have passed since the date of conviction or the completion of any active sentence, period of probation, and post-release supervision, whichever occurs later.
 - c. The person received a conditional discharge pursuant to completion of a ~~received was discharged and the charge was dismissed upon completion of a~~ conditional discharge pursuant to ~~to under~~ G.S. 14-204(b)."

SECTION 4.(b) Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"§ 15A-145.9. Expunctions of certain offenses committed by human trafficking victims.

(a) Definition. – For purposes of this section, the following terms apply:

(1) Nonviolent offense. – Any misdemeanor or felony except the following:

- a. A Class A through G felony.
- b. An offense that includes assault as an essential element of the offense.
- c. An offense requiring registration pursuant to Article 27A of Chapter 14 of the General Statutes, whether or not the person is currently required to register.
- d. Any of the following sex-related or stalking offenses: G.S. 14-27.25(b), 14-27.30(b), 14-190.7, 14-190.8, 14-190.9, 14-202, 14-208.11A, 14-208.18, 14-277.3A, or 14-321.1.
- e. An offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any offense for which punishment was determined pursuant to G.S. 14-3(c).
- f. An offense under G.S. 14-401.16.
- g. A traffic offense.
- h. Any offense that is an attempt to commit an offense described in sub-subdivisions a. through g. of this subdivision.

(2) Trafficking victim. – A person that meets the definition for the term "victim" set forth in G.S. 14-43.10 or a victim of a severe form of trafficking under the federal Trafficking Victims Protection Act (22 U.S.C. § 7102(13)).

(b) Expunction Authorized. – A person who has been convicted of a nonviolent offense may file a petition in the court of the county where the person was convicted for expunction of the nonviolent offense from the person's criminal record if the court finds that the person was coerced or deceived into committing the offense as a direct result of having been a trafficking victim.

(c) Petition Requirements. – The petition shall contain all of the following:

- (1) An affidavit by the petitioner that the petitioner is a victim of human trafficking and was coerced or deceived into committing the offense as a direct result of their status as a trafficking victim.
- (2) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
- (3) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a search by the Department of Public Safety for any outstanding warrants. The application shall be filed with the clerk of superior court. The clerk of superior court shall forward the application to the Department of Public Safety, which shall conduct the search and report its findings to the court.
- (4) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.

(d) Service of Petition. – The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 30 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

(e) Issues for Consideration. – The court in which the petition was filed may take the following steps and may consider the following issues in rendering a decision upon a petition for expunction of records of an offense under this section:

- (1) Call upon a probation officer for additional investigation or verification of the petitioner's conduct during the period since the date of conviction of the offense in question.
- (2) Review any other information the court deems relevant, including, but not limited to, affidavits or other testimony provided by law enforcement officers, district attorneys, or licensed social workers.

(f) Restoration of Status. – The court shall order that the person be restored, in the contemplation of the law, to the status the person occupied before the arrest or indictment or information if the court finds all of the following after a hearing:

- (1) The criteria set out in subsection (b) of this section are satisfied.
- (2) The petitioner has no outstanding warrants.
- (3) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner.

(g) Effect. – No person as to whom an order has been entered pursuant to subsection (f) of this section shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving false statement by reason of that person's failure to recite or acknowledge the arrest, indictment, information, trial, or conviction. Persons required by State law to obtain a criminal history record check on a prospective employee shall not be deemed to have knowledge of any convictions expunged under this section.

(h) Law Enforcement Certification. – Persons pursuing certification under the provisions of Article 1 of Chapter 17C of 17E of the General Statutes, however, shall disclose all convictions to the certifying Commission regardless of whether or not the convictions were expunged pursuant to the provisions of this section.

(i) Records Expunged. – The court shall also order that the conviction of the offenses be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

(j) Additional Records Expunged. – Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. This subsection shall not apply to the Department of Justice for DNA records and samples stored in the State DNA Database and the State DNA Databank."

SECTION 4.(c) G.S. 15A-151.5(a) is rewritten to read:

"(a) Notwithstanding any other provision of this Article, the Administrative Office of the Courts shall make all confidential files maintained under G.S. 15A-151 electronically available to all prosecutors of this State if the criminal record was expunged on or after July 1, 2018, under any of the following:

...

(7a) **G.S. 15A-145.9 Expunction of records of certain offenses committed by human trafficking victims.**

..."

SECTION 4.(d) G.S. 7B-3200 reads as rewritten:

"§ 7B-3200. Expunction of records of juveniles alleged or adjudicated delinquent and undisciplined.

...

(b) Any person who has attained the age of 18 years may file a petition in the court where the person was adjudicated delinquent for expunction of all records of that adjudication provided:

- (1) The offense for which the person was adjudicated would have been a crime other than a Class A, B1, B2, C, D, or E felony if committed by an adult.
- (1a) The person has been released from juvenile court jurisdiction.
- (2) At least 18 months have elapsed since the person was released from juvenile court jurisdiction, and the person has not subsequently been adjudicated delinquent or convicted as an adult of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.

The requirements set forth in subdivision (2) of this subsection shall not apply to a person whose participation in the offense was a result of having been a victim of human trafficking as defined in G.S. 14-43.10 or a victim of a severe form of trafficking in persons as defined in the federal Trafficking Victims Protection Act, 22 U.S.C. § 7102.

Records relating to an adjudication for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult shall not be expunged.

(c) The petition shall contain, but not be limited to, all of the following:

- (1) An affidavit by the petitioner that includes all of the following statements:
 - a. ~~the~~ That the petitioner has been of good behavior since the adjudication and, in the case of a adjudication.
 - b. If the petition is based on a delinquency adjudication, that the petitioner has been released from juvenile court jurisdiction and has not subsequently been adjudicated delinquent or convicted as an adult of any felony or misdemeanor other than a traffic violation under the laws of the United States, or the laws of this State or any other state; state.
 - c. If the petitioner is not subject to the requirements set forth in subdivision (2) of subsection (b) of this section, the affidavit shall state that the petitioner was adjudicated delinquent for an offense the petitioner participated in as a result of having been a victim of human trafficking as defined in G.S. 14-43.10 or a victim of a severe form of trafficking in persons as defined in the federal Trafficking Victims Protection Act, 22 U.S.C. § 7102.
- (2) Verified affidavits of two persons, who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives and that the petitioner's character and reputation are good; and good.
- (3) A statement that the petition is a motion in the cause in the case wherein the petitioner was adjudicated delinquent or undisciplined.

The petition shall be served upon the district attorney in the district wherein adjudication occurred. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing on the petition.

...."

SECTION 4.(e) This section becomes effective December 1, 2019, and applies to petitions filed on or after that date.

EXPAND GROUNDS FOR APPROPRIATE RELIEF FOR HUMAN TRAFFICKING VICTIMS

....

PART III. SEVERABILITY CLAUSE/EFFECTIVE DATE

SEVERABILITY CLAUSE

SECTION 7. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

EFFECTIVE DATE

SECTION 8. Except where otherwise provided, this act becomes effective on July 1, 2019.

In the General Assembly read three times and ratified this the 11th day of July, 2019.

s/ Carl Ford
Presiding Officer of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 11:26 a.m. this 22nd day of July, 2019

Text of G.S. 15A-151.5 prior to amendment by S.L. 2019-158:

§ 15A-151.5. Prosecutor access to expunged files.

(a) Notwithstanding any other provision of this Article, the Administrative Office of the Courts shall make all confidential files maintained under G.S. 15A-151 electronically available to all prosecutors of this State if the criminal record was expunged on or after July 1, 2018, under any of the following:

- (1) G.S. 15A-145. Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor; expunction of certain other misdemeanors.
- (2) G.S. 15A-145.1. Expunction of records for first offenders under the age of 18 at the time of conviction of certain gang offenses.
- (3) G.S. 15A-145.2. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain drug offenses.

- (4) G.S. 15A-145.3. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain toxic vapors offenses.
- (5) G.S. 15A-145.4. Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony.
- (6) G.S. 15A-145.5. Expunction of certain misdemeanors and felonies; no age limitation.
- (7) G.S. 15A-145.6. Expunctions for certain defendants convicted of prostitution.
- (8) G.S. 15A-146(a). Expunction of records when charges are dismissed.
- (9) G.S. 15A-146(a1). Expunction of records when charges are dismissed.

(b) For any expungement granted on or after July 1, 2018, the expunged criminal records under subdivisions (1) through (7) of subsection (a) of this section may be used to calculate prior record level if the named person is convicted of a subsequent criminal offense.

(c) For any expungement granted on or after July 1, 2018, the information maintained by the Administrative Office of the Courts, and made available under subsection (a) of this section, shall be prima facie evidence of the expunged conviction for the purposes of calculating prior record level of the named person and shall be admissible into evidence at a subsequent criminal sentencing hearing. (2017-195, s. 1.)

G.S. 15A-151.5 at present:

§ 15A-151.5. Prosecutor access to expunged files.

(a) **(See editor's note)** Notwithstanding any other provision of this Article, the Administrative Office of the Courts shall make all confidential files maintained under G.S. 15A-151 electronically available to all prosecutors of this State if the criminal record was expunged on or after July 1, 2018, under any of the following:

...

(7a) G.S. 15A-145.9. Expunction of records of certain offenses committed by human trafficking victims.

....

(b) For any expungement granted on or after July 1, 2018, the expunged criminal records under subdivisions (1) through (7) of subsection (a) of this section may be used to calculate prior record level if the named person is convicted of a subsequent criminal offense.

(c) For any expungement granted on or after July 1, 2018, the information maintained by the Administrative Office of the Courts, and made available under subsection (a) of this section, shall be prima facie evidence of the expunged conviction for the purposes of calculating prior record level of the named person and shall be admissible into evidence at a subsequent criminal sentencing hearing. (2017-195, s. 1; 2019-158, s. 4(c).)

(The editor's note referenced in the parenthetical in the catchline briefly explained the issue, stated that the section was set out at our direction, and set out the text of G.S. 15A-151.5(a) prior to amendment.)

Text of G.S. 120-20.1:

§ 120-20.1. Coded bill drafting.

- (a) Whenever in any act:
 - (1) It is stated that:
 - a. A law "reads as rewritten:"; or
 - b. Laws "read as rewritten:"; and
 - (2) The law is set out showing material struck through or underlined, or both the material struck through is being deleted from the existing law, and the material underlined is being added to the existing law.
- (b) Notwithstanding subsection (a) of this section, underlining in a column heading is existing law, and a double underline shows a column heading being added to existing law.
- (b1) In any part of a law enacted in the format provided by this section, the material deleted from existing law and the material being added to existing law are the only changes made, the setting out of material not deleted or added is for illustration only, and the fact that two different acts amend the same law, when one or more of those is in the format provided by this section, does not in itself create a conflict.
- (b2) In any act ratified on or after January 11, 1989, when a new section, subsection, or subdivision is added to the General Statutes, and that section, subsection, or subdivision is underlined, the underlining is not part of the law, but merely an illustration that the material in the bill which enacted the law is new.
- (c) As used in this section "act" and "law" also includes joint and simple resolutions.
- (d) This section applies to acts ratified on or after February 9, 1987. (1987, c. 138; c. 485, s. 4; 1989, c. 770, s. 40; 2001-487, s. 78.)